(2)

No. 05-1406

Supreme Court, U.S.
FILED
JUN 5 - 2006
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

SHEILA DAVIS,

Petitioner,

v.

POLK COUNTY SHERIFF'S OFFICE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

R. CARL CANNON
CONSTANGY, BROOKS & SMITH, LLC
230 Peachtree Street, N.W.
Suite 2400
Atlanta, Georgia 30303-1557
(404) 525-8622

Attorneys for Respondent

201532

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Should the Court grant certiorari to review the Eleventh Circuit's holding that the district court's *sua sponte* dismissal of Davis's Amended Complaint, pursuant to 28 U.S.C. § 1915(e)(2)(B)(i), was not an abuse of discretion, because Davis failed to meet a prerequisite to maintain her claim?

TABLE OF CONTENTS

Page

Question Presented i

Table of Contents ii

Table of Cited Authorities iv

Statutory Provisions 1

Introduction 3

Counterstatement of the Case 5

A. District Courts Are Given the Discretion to Dismiss a Complaint Filed *In Forma Pauperis* If the Complaint is Frivolous. 5

B. An Individual Employee Who Files Suit Under Title VII of the Civil Rights Act Must Establish That She Has Satisfied All Prerequisites, Including the Filing of a Timely Charge of Discrimination, in Order to Maintain a Claim Against Her Employer. 7

C. The Holding of the Eleventh Circuit Follows This Court's Decisions and Is Consistent With the Other Circuit Courts of Appeals That Have Addressed the Issue. 8

D. Statement of the Proceedings Below. 8

E. Counterstatement of Facts 9

Contents

	Page
Reasons for Denying the Petition	10
A. The Law Regarding A District Court's Discretion to Dismiss a Complaint Filed *In Forma Pauperis* Is Well-Established.	11
B. The Eleventh Circuit's Application of 42 U.S.C. § 2000e-5(e)(1) is Consistent With the Standards Applied by This Court.	17
Conclusion	19

TABLE OF CITED AUTHORITIES

Page

Cases:

Clark v. Georgia Pardons and Parole Board, 915 F.2d 636 (11th Cir. 1990) 6, 13

Denton v. Hernandez, 504 U.S. 25 (1992) .....*passim*

E.E.O.C. v. Joe's Stone Crabs, Inc., 296 F.3d 1265 (11th Cir. 2002) 18

Johnson v. Reagan, 524 F.2d 1123 (9th Cir. 1975) .. 6, 13

Johnson v. Rodriguez, 943 F.2d 104 (1st Cir. 1991) 6, 12

Kimble v. Beckner, 806 F.2d 1256 (5th Cir. 1986) ... 6, 13

Love v. Pullman Co., 404 U.S. 522 (1972) 17

Maynard v. Pneumatic Products Corp., 256 F.3d 1259 (11th Cir. 2001) 7, 17

Moore v. Burger, 655 F.2d 1265 (D.C. Cir. 1981) .. 6, 13

Moore v. McDonald, 30 F.3d 616 (5th Cir. 1994) ... 6, 12

Nasim v. Warden, Maryland House of Corrections, 64 F.3d 951 (4th Cir. 1995) 6, 12

Cited Authorities

Page

National Railroad Passenger Corp. v. Morgan, 536 U.S. 101 (2002) 7, 15, 17, 18

Neitzke v. Williams, 490 U.S. 319 (1989) ..... *passim*

Pino v. Ryan, 49 F.3d 51 (2d Cir. 1995) 5, 6, 12, 13

Sanders v. United States, 760 F.2d 869 (8th Cir. 1985) 6, 13

Street v. Vose, 936 F.2d 38 (1st Cir. 1991) 6, 13

Wilson v. Lynaugh, 878 F.2d 846 (5th Cir. 1989) ... 6, 13

Yellen v. Cooper, 828 F.2d 1471 (10th Cir. 1987) ... 6, 13

Statutes:

28 U.S.C. § 1915(e) ..... *passim*

42 U.S.C. § 2000e-5 ..... *passim*

Rules of Court:

Sup. Ct. R. 10 ..... 4, 11, 17

STATUTORY PROVISIONS

1. The case at issue involves a *sua sponte* dismissal of an *in forma pauperis* complaint in the court below pursuant to Title 28, Section 1915(e)(2)(B)(i). Title 28, Section 1915(e), of the United States Code provides:

> (1) The court may request an attorney to represent any person unable to afford counsel.
>
> (2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that —
>
> (A) the allegation of poverty is untrue; or
>
> (B) the action or appeal—
>
> (i) is frivolous or malicious;
>
> (ii) fails to state a claim on which relief may be granted; or
>
> (iii) seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915(e).

2. The court below held that the case had "no possibility of success," thus finding that the action was frivolous. The holding was based upon a failure to satisfy a prerequisite to suit. Said prerequisite to pursuing Petitioner's claims is

located within Title 42, Section 2000(e)-5(e)(1) of the United States Code, which states that:

> **(e) Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency; seniority system**
>
> **(1)** A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

42 U.S.C. § 2000e–5(e)(1).

To the honorable Justices of the Supreme Court of the United States:

Respondent, Polk County Sheriff's Office ("PCSO"), for the reasons set forth below, respectfully requests that the Court deny the Petition for Writ of Certiorari seeking review of the decision of the United States Court of Appeals for the Eleventh Circuit in this case.

INTRODUCTION

PCSO opposes the Petition of Sheila Davis ("Davis") for Writ of Certiorari to review the decision of the Eleventh Circuit Court of Appeals because that decision merely applies existing law. In this case, the Eleventh Circuit affirmed the district court's dismissal of Davis's Amended Complaint, filed *in forma pauperis*, because she failed to establish a prerequisite to maintaining her suit under Title VII of the Civil Rights Act. In particular, Davis, after being given the opportunity to amend the deficiencies in her initial Complaint, pled facts evidencing her failure to timely file a charge of discrimination. Therefore, the Eleventh Circuit affirmed the dismissal based upon this failure. The Eleventh Circuit's ruling was consistent with this Court's prior opinions construing Title VII. Furthermore, the other courts of appeals that have addressed the dismissal of *in forma pauperis* complaints which pled facts that established affirmative defenses have also upheld the dismissal of such complaints as frivolous. Consequently, the Court should deny Davis's Petition because the Eleventh Circuit's decision is consistent with this Court's prior opinions and the decision

of every other federal court that has addressed the issue. The Petition simply does not present an issue compelling review by the Court.

Davis failed to establish that she met the prerequisites to maintaining a claim under Title VII of the Civil Rights Act because the facts in her Amended Complaint demonstrated that she did not timely file a charge of discrimination before alleging race discrimination in her suit.[1] Consequently, the Eleventh Circuit properly affirmed the district court's dismissal of Davis's Amended Complaint because it was frivolous.

The facts in the record are undisputed, and present no compelling basis for review by the Court.[2] Furthermore, the issues do not involve any "important question of federal law" in a way that "conflicts with relevant decisions of this Court" or of the courts of appeals.[3] The issues of law presented are neither novel nor complex, and the decision of the Eleventh

---

1. *See* Petition App. 6. (Davis did not attach her Complaint or Amended Complaint to her Petition. Therefore, PCSO cites to the district court's Order dismissing her Amended Complaint with Prejudice).

2. PCSO was never served with either the Complaint or Amended Complaint. Consequently, it did not file an answer and defenses to the allegations contained within Davis's pleadings and there was no factual record outside of the allegations in Davis's Amended Complaint. Therefore, the only facts are those cited by the district court in its dismissal.

3. *See* Sup. Ct. R. 10.

Circuit is entirely consistent with the reasoning and analysis developed in similar cases decided by other courts of appeals. Therefore, the Petition should be denied.

COUNTERSTATEMENT OF THE CASE

A. District Courts Are Given the Discretion to Dismiss a Complaint Filed *In Forma Pauperis* If the Complaint is Frivolous.

Complaints filed *in forma pauperis* are subject to *sua sponte* dismissal if based upon an indisputably meritless legal theory.[4] The statutory authority granted to district courts is designed largely to discourage filing of, and prevent the waste of judicial and private resources upon, baseless suits that paying litigants generally do not file because of the cost of bringing suit and the threat of Rule 11 sanctions.[5] Rather than provide a definitive answer as to what qualifies as a frivolous complaint, this Court has left the decision up to district courts to determine what claims lack legal merit.[6] Under these standards, appellate courts have held that a complaint containing a defense on its face is based upon an indisputably meritless legal theory.[7]

---

4. 28 U.S.C. § 1915(e)(2)(B)(i)(2004).

5. *Neitzke v. Williams*, 490 U.S. 319, 327 (1989). (In 1996, Congress amended 28 U.S.C. § 1915. At that time, the statute section addressing the standards for dismissing a frivolous complaint was reclassified from § 1915(d) to § 1915(e)).

6. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992).

7. *Pino v. Ryan*, 49 F.3d 51, 53 (2nd Cir. 1995), *citing*, *Neitzke*, 490 U.S. at 327.

The Eleventh Circuit reviewed the record Davis submitted following the dismissal of her Amended Complaint and affirmed the district court's Order because her allegations established that she failed to timely file a charge of discrimination alleging race discrimination.[8] Based upon the facts pled in her Amended Complaint, Davis could not establish that she complied with a prerequisite to maintain her cause of action; therefore, the dismissal was affirmed.[9] This decision is consistent with the direction provided by this Court.[10] Furthermore, the other circuit courts of appeals have also held that a claim, filed under 28 U.S.C. § 1915, is frivolous when it contains a defense on the face of the complaint.[11]

---

8. Petition App. 5.

9. *Id.* at 5.

10. *Neitzke*, 490 U.S. at 327 (claims in which a defendant is immune from suit are an example of claims that are subject to dismissal under 28 U.S.C. 1915[e]).

11. *Nasim v. Warden, Maryland House of Corrections*, 64 F.3d 951, 956 (4th Cir. 1995) (*en banc*) (statute of limitations), *cert denied*, 516 U.S. 1177 (1996); *Pino v. Ryan*, 49 F.3d 51 (2nd Cir. 1995) (statute of limitations); *Moore v. McDonald*, 30 F.3d 616, 620 (5th Cir. 1994) (statute of limitations); *Johnson v. Rodriguez*, 943 F.2d 104, 110 (1st Cir. 1991) (statute of limitations), *cert. denied*, 502 U.S. 1063 (1992); *Street v. Vose*, 936 F.2d 38, 39 (1st Cir. 1991) (statute of limitations), *cert. denied*, 502 U.S. 1063, (1992); *Clark v. Georgia Pardons and Parole Board*, 915 F.2d 636, 640 & n. 2 (11th Cir. 1990) (dictum concerning affirmative defenses generally); *Wilson v. Lynaugh*, 878 F.2d 846, 851 (5th Cir. 1989) (*res judicata*), *cert. denied*, 493 U.S. 969 (1989); *Yellen v. Cooper*, 828 F.2d 1471, 1476 (10th Cir. 1987) (waiver); *Kimble v. Beckner*, 806 F.2d 1256, 1257 (5th Cir. 1986) (immunity); *Sanders v. United States*, 760 F.2d 869, 872 (8th Cir. 1985) (*per curiam*) (jurisdiction based on Plaintiff's failure to timely exhaust administrative remedies); *Moore v. Burger*, 655 F.2d 1265, 1266 (D.C. Cir. 1981) (immunity); *Johnson v. Reagan*, 524 F.2d 1123, 1124 (9th Cir. 1975) (immunity).

B. An *Individual Employee* Who Files Suit Under Title VII of the Civil Rights Act Must Establish That She Has Satisfied All Prerequisites, Including the Filing of a Timely Charge of Discrimination, in Order to Maintain a Claim Against Her Employer.

A prerequisite for filing suit under Title VII is the timely filing of a charge of discrimination.[12] Because Florida is a "deferral state,"[13] Title VII of the Civil Rights Act requires an individual to file a charge of discrimination within "three hundred days after the alleged unlawful employment practice occurred. . . ."[14] The failure to meet this prerequisite subjects a complaint to dismissal.

The Eleventh Circuit determined that Davis's Amended Complaint alleged that she was terminated in 1998 but did not file her charge of discrimination until 2003, five years after she was terminated.[15] Therefore, her failure to timely file her charge prevented her from maintaining a cause of action.[16]

---

12. 42 U.S.C. § 2000e-5(e)(1); *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 113 (2002).

13. Deferral states "prohibit the unlawful employment practice at issue and have established state or local authorities to grant or seek relief for such practice." *Maynard v. Pneumatic Products Corp.*, 256 F.3d 1259, 1262-63 (11th Cir. 2001).

14. 42 U.S.C. § 2000e-5(e)(1).

15. Petition at 2, App. 4-5.

16. *Id.* at 5.

C. The Holding of the Eleventh Circuit Follows This Court's Decisions and Is Consistent With the Other Circuit Courts of Appeals That Have Addressed the Issue.

This Court has held that a complaint filed against a defendant that is immune from suit is subject to dismissal under § 1915(e).[17] This holding is based upon the broad statutory power given to district courts under the statute.[18] Furthermore, the Eleventh Circuit's decision consistently applies the analysis adopted by the other courts of appeals that have addressed the issue.[19] Consequently, the issue is not one that needs to be addressed by this Court, as Title VII of the Civil Rights Act clearly provides that an alleged victim of discrimination must file a timely charge of discrimination in order to maintain an action under that statute.[20]

D. Statement of the Proceedings Below.

Davis filed her Complaint on January 30, 2004, alleging race discrimination and retaliation under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* ("Title VII"), along with a Motion for Leave to Proceed *In Forma Pauperis*. The district court dismissed the Complaint, *sua sponte*, without prejudice on February 17,

---

17. *Neitzke*, 490 U.S. at 327 (citations omitted).

18. *Id.*

19. *See* n. 11 *supra*.

20. 42 U.S.C. § 2000e-5(e)(1).

2004, and gave Davis 30 days to file an amended complaint. It deferred consideration of the Motion for Leave to Proceed *In Forma Pauperis* until Davis filed an amended complaint. The district court dismissed the Complaint because Davis did not identify the time when the discrimination took place and type of discrimination she was alleging during that time frame. PCSO was not served with the Complaint.

An Amended Complaint was filed on August 5, 2004, alleging race discrimination and retaliation under Title VII. The district court dismissed the Amended Complaint, *sua sponte*, with prejudice on August 6, 2004, because the Amended Complaint alleged facts establishing Davis's failure to meet the prerequisite of a timely filed charge of discrimination.

Davis filed a Motion for Reconsideration on December 27, 2004. The motion was denied on December 28, 2004, because it was untimely.

On January 27, 2005, Davis filed a Notice of Appeal. She subsequently filed an Affidavit of Indigency on January 28, 2005. The district court considered the affidavit to be a Motion for Leave to Appeal *In Forma Pauperis* and denied the motion because the district court considered the appeal to be frivolous.

E. Counterstatement of Facts

Davis has failed to include any record support for the facts contained within her "Statement of the Case" outside of those found by the district court and the Eleventh Circuit Court of Appeals in their respective orders.[21] The relevant

21. *See* Petition App. 1-7.

facts cited in the Eleventh Circuit's order are: (1) the most recent acts of alleged discrimination occurred on or about May 1998, (2) Davis did not file her charge of discrimination with the EEOC until May or June 2003, (3) Davis had 300 days to file her charge of discrimination, and (4) Davis did not satisfy the prerequisite of a timely filed charge.[22]

The allegations contained in Davis's charge of discrimination filed following her termination from PCSO alleged that she was discriminated against based upon her marital status.[23] There was no claim of race discrimination in the charge and the state agency did not consider any race discrimination claims in its subsequent investigation into the allegations.[24]

REASONS FOR DENYING THE PETITION

The decisions below do not conflict with a decision of this Court or any court of appeals, nor do they implicate a federal question that has not been decided by this Court. Instead, Davis has argued that the decisions below were based upon an erroneous legal conclusion. Accordingly, Davis has

---

22. *See Id.* 4-5.

23. Petition App. 9. In support of her Petition for Writ of Certiorari, Davis attached the "Final Order Dismissing Petition For Relief From An Unlawful Employment Practice" issued by the Florida Commission on Human Relations. (Petition App. 9). This Order was not a part of the appellate record and was never attached in support of Davis's Complaint or Amended Complaint. Therefore, it is not properly before this Court. Nonetheless, PCSO cites this order, in an abundance of caution, to establish that Davis's initial charge of discrimination did not allege race discrimination.

24. *Id.*

not carried her burden of demonstrating any "compelling reasons" for the Petition to be granted.[25]

A. The Law Regarding A District Court's Discretion to Dismiss a Complaint Filed *In Forma Pauperis* Is Well-Established.

The dismissal of a frivolous *in forma pauperis* complaint is a discretionary decision, reviewable under an abuse standard.[26] Pursuant to this standard, the Court has established broad parameters for determining when an *in forma pauperis* complaint may be dismissed.[27] It has ruled that district courts not only have the authority to dismiss claims based upon an indisputably meritless legal theory, but also that courts have the power to pierce the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless.[28]

As part of this broad power, the Court has held that dismissal of such a complaint is appropriate when the district court is satisfied that the complaint is frivolous.[29] While a district court should be cautious when dismissing a complaint, this "caution need not lead to paralysis, and

---

25. Sup. Ct. R. 10 ("A petition for Writ of Certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.").

26. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992).

27. *Neitzke v. Williams*, 490 U.S. 319, 328 (1984).

28. *Neitzke*, 490 U.S. at 328.

29. *Neitzke*, 490 U.S. at 327.

whenever a district court is satisfied that a complaint is 'based on an indisputably meritless legal theory,' . . . it has the discretion to dismiss the complaint under section 1915[e]."[30] "[A] complaint, containing as it does both factual allegations and legal conclusions, is frivolous where it lacks an arguable basis in either law or fact."[31] Furthermore, the Court has declined to provide definitive "guideposts" regarding the definition of a frivolous claim; instead, it has held that the decision is entrusted to the discretion of the court entertaining the *in forma pauperis* complaint.[32] District courts are entrusted with the decision to determine if a complaint is "clearly baseless" because they are in the best position to analyze the complaint.[33]

An individual district court's authority to determine whether or not a complaint is frivolous is expressly granted by statute.[34] Pursuant to the statutory language, the circuits that have addressed this issue have all reached the same conclusion; "an indisputably meritless legal theory" includes a complaint that contains a defense on its face.[35] As the Second Circuit Court

30. *Pino v. Ryan*, 49 F.3d 51, 53 (2nd Cir. 1995).

31. *Neitzke*, 490 U.S. at 325.

32. *Denton*, 504 U.S. at 33.

33. *Denton*, 504 U.S. at 33.

34. *See* 28 U.S.C. § 1915(e).

35. *Nasim v. Warden, Maryland House of Corrections*, 64 F.3d 951, 956 (4th Cir. 1995) (*en banc*) (statute of limitations), *cert denied*, 516 U.S. 1177 (1996); *Pino v. Ryan*, 49 F.3d 51 (2nd Cir. 1995) (statute of limitations); *Moore v. McDonald*, 30 F.3d 616, 620 (5th Cir. 1994) (statute of limitations); *Johnson v. Rodriguez*, 943 F.2d 104, 110 (1st Cir. 1991) (statute of limitations), *cert. denied*, 502 U.S. 1063

(Cont'd)

of Appeals explained, this conclusion is based upon the Supreme Court having "explicitly pointed toward [this] result . . . by citing 'claims against which it is clear that the defendants are immune from suit' as an example of claims dismissible under section 1915[e]."[36]

In order to determine whether or not a district court abused its discretion, this Court has established several general guidelines that should be considered when analyzing the dismissal of an *in forma pauperis* complaint.[37] They include: (1) whether or not the plaintiff was proceeding *pro se*, (2) whether the court inappropriately resolved a genuine issue of disputed fact, (3) whether the court applied an erroneous legal conclusion, (4) whether the court has provided a statement explaining the dismissal that facilitates "intelligent appellate review," and (5) whether the case was

---

(Cont'd)

(1992); *Street v. Vose*, 936 F.2d 38, 39 (1st Cir. 1991) (statute of limitations), *cert. denied*, 502 U.S. 1063, (1992); *Clark v. Georgia Pardons and Parole Board*, 915 F.2d 636, 640 & n. 2 (11th Cir. 1990) (dictum concerning affirmative defenses generally); *Wilson v. Lynaugh*, 878 F.2d 846, 851 (5th Cir. 1989) (*res judicata*), *cert. denied*, 493 U.S. 969 (1989); *Yellen v. Cooper*, 828 F.2d 1471, 1476 (10th Cir. 1987) (waiver); *Kimble v. Beckner*, 806 F.2d 1256, 1257 (5th Cir. 1986) (immunity); *Sanders v. United States*, 760 F.2d 869, 872 (8th Cir. 1985) (*per curiam*) (jurisdiction based on Plaintiff's failure to timely exhaust administrative remedies); *Moore v. Burger*, 655 F.2d 1265, 1266 (D.C. Cir. 1981) (immunity); *Johnson v. Reagan*, 524 F.2d 1123, 1124 (9th Cir. 1975) (immunity).

36. *Pino v. Ryan*, 49 F.3d at 53, *quoting*, *Neitzke*, 490 U.S. at 327 (citation omitted).

37. *See Denton*, 504 U.S. at 33-34.

dismissed with or without prejudice.[38] None of these factors creates a basis to overturn the Eleventh Circuit's affirmation of the dismissal.

In the present matter, the district court recognized that Davis was proceeding *pro se*. It gave Davis the opportunity to correct the frivolity of her Complaint by providing her with a roadmap for meeting the prerequisite to maintaining her claim.[39] The dismissal, without prejudice, explained the steps Davis needed to take in order to establish that she timely filed the underlying charge of discrimination to maintain a claim.[40] Because Davis's Amended Complaint demonstrated that Davis did not meet a prerequisite needed to proceed with her lawsuit, the court dismissed it.[41]

The dismissal of Davis's Amended Complaint did not result from the inappropriate resolution of genuine issues of disputed fact. The only facts presented were those alleged in Davis's Amended Complaint. Accepted as true, these alleged facts established the timeline of events that proved the meritless nature of her claims.[42] Consequently, neither the district court nor the Eleventh Circuit Court of Appeals was

---

38. *Denton*, 504 U.S. at 34 (citations omitted).

39. *See* Petition App. 5.

40. *Id.*

41. *Id.*

42. *See* Petition App. 4, 5-6. Davis alleged that she was discriminated against most recently in 1998 as a result of her termination. Davis subsequently alleged that she filed her charge of discrimination with the EEOC in 2003.

required to resolve any factual disputes because Davis's own pleadings established that she failed to meet a prerequisite to maintain her claim.[43]

Further, the Amended Complaint's dismissal was not based upon an erroneous legal conclusion. The timely filing of a charge of discrimination is a statutorily created prerequisite to bringing suit under Title VII.[44] Based upon the allegations within the Amended Complaint, the district court concluded that it should be dismissed. This decision and the Eleventh Circuit's affirmation simply applied the statute's articulated standards and this Court's prior holdings.[45]

Finally, the Order dismissing Davis's Amended Complaint with prejudice clearly articulated why it was being dismissed. The district court provided Davis with a roadmap to follow when it dismissed her complaint.[46] This gave Davis the opportunity to file an Amended Complaint evidencing the timely filing of a charge of discrimination, if she could.[47] After reviewing the district court's dismissal, the Eleventh Circuit was able to analyze the basis for the district court's holding, cited the same facts evidencing Davis's failure to establish the prerequisite and determined that Davis could

---

43. *Id.*

44. 42 U.S.C. § 2000-5(e)(1); *see also National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 110 (2002).

45. *See Id.*

46. *See* Petition App. 5.

47. *Id.* at 5.

not maintain her claim.[48] As a result, the Eleventh Circuit also concluded that the Amended Complaint was frivolous.

The current Petition does not even address, let alone establish, that the Eleventh Circuit erroneously decided any of the factors used to analyze whether or not the district court abused its discretion by dismissing the Amended Complaint. Therefore, Davis cannot establish that the district court abused its discretion by dismissing the Amended Complaint.[49]

Even if Davis had persuasively argued that the dismissal of her Amended Complaint was an abuse of discretion, that would not be enough to proceed before this Court. Davis needed to meet the more strenuous burden of demonstrating that there are compelling reason to grant the Petition.[50] Nonetheless, Davis has not asserted any argument addressing a compelling reason.[51] Instead, Davis simply asserts that the decisions below were based upon erroneous factual findings.[52] Consequently, she has not met her burden and this Petition should be denied.

---

48. *Id.* at 4.

49. *See Neitzke*, 490 U.S. at 327 (dismissal is appropriate when defendants are immune from suit).

50. *See* Sup. Ct. R. 10.

51. *Id.*

52. Petition at 4.

B. The Eleventh Circuit's Application of 42 U.S.C. § 2000e-5(e)(1) is Consistent With the Standards Applied by This Court.

Even if the Court were to consider exercising its judicial discretion to grant the Petition based upon Petitioner's argument that the decision was based upon erroneous factual findings, there is no merit to her claims.[53] It is well established that an individual filing suit under Title VII of the Civil Rights Act of 1964, as amended, must timely file a charge of discrimination.[54] The failure to file a charge timely results in an individual losing her ability to recover from a discrete act of discriminatory conduct.[55] Applying the statutory language and this Court's rulings, appellate courts have uniformly held that such failure subjects a subsequent complaint to dismissal.[56]

---

53. *See* Sup. Ct. R. 10. ("A petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of properly stated rule of law.")

54. 42 U.S.C. § 2000e-5(e)(1); *see also Love v. Pullman Co.*, 404 U.S. 522, 523 (1972) ("A person claiming to be aggrieved by a violation of Title VII of the Civil Rights Act of 1964 . . . may not maintain a suit for redress in federal district court until he has first unsuccessfully pursued certain avenues of potential administrative relief.").

55. *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 110 (2002).

56. *See Maynard v. Pneumatic Prods. Corp.*, 256 F.3d 1259, 1262 (11th Cir. 2001).

Because Florida is a "deferral state,"[57] Davis was required to file a charge within three hundred days after the alleged unlawful employment practice occurred.[58] Nonetheless, Davis's allegations evidenced her failure to act within this time limit.[59] Davis alleged that she was terminated in 1998 and subsequently filed a charge with the EEOC in May or June of 2003.[60] This was five years after the alleged discriminatory act and well outside the applicable parameters.[61] This failure is fatal to her claim because the timely filing of a charge is mandatory.[62]

---

57. Under Title VII, a deferral state is one that prohibits the unlawful employment practice at issue and has established State or local authorities to grant or seek relief for such practice. *See E.E.O.C. v Joe's Stone Crabs, Inc.*, 296 F.3d 1265, 1271 (11th Cir. 2002).

58. 42 U.S.C. § 2000e-5(e)(1).

59. *See* Petition App. 4.

60. *Id.*

61. Davis appears to contend that she timely filed her charge of discrimination with the EEOC because it was filed within thirty days after receiving notice that the State or local agency terminated its proceedings under the State or local law. (Petition at 2). However, Davis's argument ignores the relevant statutory language. In particular, an individual must file a charge within three hundred days or "within thirty days from receiving notice that the State or local agency has terminated the proceedings under State or local law, *whichever is earlier.*" 42 U.S.C. § 2000e-5(e)(1) (emphasis added). Davis was disqualified from filing within thirty days of her notice that the State agency terminated its proceedings because it was more then three hundred days after the alleged incident.

62. *National Passenger Railroad*, 536 U.S. at 110.

In affirming the district court's dismissal of Davis's Amended Complaint, the Eleventh Circuit properly applied the standards articulated by this Court. Therefore, the Eleventh Circuit correctly concluded that the district court did not abuse its discretion by dismissing the Amended Complaint with prejudice.

CONCLUSION

For the foregoing reasons, Davis's Petition for Writ of Certiorari should be denied.

Respectfully submitted,

R. CARL CANNON
CONSTANGY, BROOKS & SMITH, LLC
230 Peachtree Street, N.W.
Suite 2400
Atlanta, Georgia 30303-1557
(404) 525-8622

Attorneys for Respondent